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GIVING APPELLATE COURTS TRIAL COURT POWERS

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GIVING APPELLATE COURTS TRIAL COURT POWERS. Assembly Constitutional Amendment 16. Adds Section 41 to Article VI of Constitution. Declares Legislature, in cases where jury trial is not
26 matter of right or is waived, may empower appellate court to ascertain the facts from evidence in trial court, or from additional evidence in appellate court, and make findings of fact contrary or additional to those made by trial court, and for such purposes hear additional evidence concerning facts occurring before its decision on appeal and direct entry of any judgment or order case may require.

YES

NO

(For full text of Measure see page 31, Part II.)

Argument in Favor of Assembly Constitutional Amendment No. 16.

This amendment empowers the legislature to grant to the appellate courts the right in non-jury cases, where a judgment is based on findings of fact which are unwarranted or insufficient, to make new findings and to direct the entry of a different judgment in accordance with the new findings. This will enable the appellate courts to dispose of many cases finally on one appeal, whereas now the appellate courts must always send cases back to the trial court for retrial and the making of new findings, even though it conclusively appears from the record what the findings should be.

The other important power given the legislature is to authorize the appellate courts to take new evidence on appeal concerning matters which occurred prior to trial in the lower court or pending the appeal. It often

happens that a litigant neglects to prove some simple fact in the trial court which is essential to his case and which, if he could prove in the appellate court, would produce a result favorable to him. The right to take new evidence on appeal will also enable more cases to be finally disposed of on the first appeal, and will bring about a more just disposition of cases. The appellate courts will not develop into trial courts because they will undoubtedly exercise this power sparingly and will refer any complicated questions of new evidence to the trial court or a referee for hearing.

The amendment works for elasticity, simplicity and expedition of procedure.

WALTER J. LITTLE,
 Assemblyman, Sixty-second District.

BYRON J. WALTERS,
 Assemblyman, Seventy-ninth District.

PART II

Appendix

suant to section twenty-two of this article; and it shall not have power to authorize the state or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation) shall prevent the legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the state, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country; provided, further, that nothing contained in this constitution shall prohibit the use of state money or credit, in aiding veterans who served in the military or naval service of the United States during time of war, in the acquisition of, or payments for, farms or homes, or in projects of land

settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans.

The California veterans' welfare bond act of 1921 (statutes of 1921, chapter 578), as enacted at the forty-fourth session of the legislature of the State of California, authorizing the issuance and sale of state bonds in the sum of ten million dollars, for the purpose of creating a fund to carry out the provisions of the California veterans' welfare act, providing land settlement for veterans (statutes of 1921, chapter 580), and the provisions of the "veterans' farm and home purchase act," providing farm and home aid for veterans (statutes of 1921, chapter 519), is hereby approved, adopted, legalized, validated and made fully and completely effective irrespective of the vote that may be cast upon the proposition of approving or disapproving such veterans' welfare bond act of 1921 at the general election of November 7, 1922. All provisions of this section shall be self-executing and shall not require any legislative action in furtherance thereof, but this shall not prevent such legislative action.

TAXATION AND LOCAL ASSESSMENT EXEMPTION. Senate Constitutional Amendment 32. Adds Section 1b to Article XIII of Constitution. Declares that all property used or held exclusively for the burial or other permanent deposit of the human dead or for the care, maintenance or upkeep of such property or such dead, except as used or held for profit, shall be free from taxation and local assessment.

YES

NO

Senate Constitutional Amendment No. 32—A resolution proposing to the people of the State of California, an amendment to the constitution of the State of California, by adding a new section to article thirteen thereof, to be designated as section one b, relating to revenue and taxation.

Resolved by the senate, the assembly concurring, That the legislature of the State of California, at its regular session commencing on the fifth day of January, 1925, two-thirds of the members elected to each of the two houses

of said legislature voting in favor thereof, hereby proposes to amend the constitution of the State of California by adding a new section to article thirteen thereof, to be designated as section one b, and to read as follows:

PROPOSED AMENDMENT.

Sec. 1b. All property used or held exclusively for the burial or other permanent deposit of the human dead or for the care, maintenance or upkeep of such property or such dead, except as used or held for profit, shall be free from taxation and local assessment.

GIVING APPELLATE COURTS TRIAL COURT POWERS. Assembly Constitutional Amendment 16. Adds Section 4j to Article VI of Constitution. Declares Legislature, in cases where jury trial is not matter of right or is waived, may empower appellate court to ascertain the facts from evidence in trial court, or from additional evidence in appellate court, and make findings of fact contrary or additional to those made by trial court, and for such purposes hear additional evidence concerning facts occurring before its decision on appeal and direct entry of any judgment or order case may require.

YES

NO

Assembly Constitutional Amendment No. 16—A resolution to propose to the people of the State of California an amendment to the constitution by adding a new section to article six thereof to be numbered section four and three-fourths, relative to courts of appellate jurisdiction.

Resolved by the assembly, the senate concurring, That the legislature of the State of California, at its forty-sixth regular session, commencing on the fifth day of January, one thousand nine hundred twenty-five, two-thirds of all the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes to the people of the State of California that the constitution of the State of California be amended by adding to article six thereof, a new section, to be numbered section four three-quarters, and to read as follows:

PROPOSED AMENDMENT.

Sec. 4j. In all cases where trial by jury is not a matter of right or where trial by jury has been waived, the legislature may grant to any court of appellate jurisdiction the power, in its discretion, to make findings of fact contrary to, or in addition to, those made by the trial court. The legislature may provide that such findings may be based on the evidence adduced before the trial court, either with or without the taking of additional evidence by the court of appellate jurisdiction. The legislature may also grant to any court of appellate jurisdiction the power, in its discretion, for the purpose of making such findings or for any other purpose in the interest of justice, to take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal, and to give or direct the entry of any judgment or order and to make such further or other order as the case may require.